

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Ronald Lynn Blair et al.
Serial No.: 10/561,024
Filed: December 16, 2005
Title: PARENTAL MONITORING OF DIGITAL CONTENT
Examiner: Alan H. Luong
Art Unit: 2427
Customer No.: 24498

APPEAL BRIEF

**Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

Sir:

In response to the non-final Office Action dated May 18, 2009, and further to the Notice of Appeal filed on November 18, 2009, Appellants hereby submit an Appeal Brief in accordance with 37 C.F.R. §41.37 for the above-referenced application. Please charge Deposit Account 07-0832 for the fee owed in connection with this brief.

Appellants do not request an oral hearing.

I. Real Party in Interest

The real party in interest is Thomson Licensing LLC.

II. Related Appeals and Interferences

There are no prior or pending appeals, interferences, or judicial proceedings known to Appellants, the Appellants' legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-2, 5-13 and 16-19 are pending in this application, and are rejected.

Claims 3-4 and 14-15 are cancelled.

The rejection of claims 1-2, 5-13 and 16-19 is being appealed.

IV. Status of Amendments

No amendment subsequent to the final rejection of December 15, 2008 or the non-final rejection of May 18, 2009 has been filed.

V. Summary of Claimed Subject Matter

Independent claim 1 defines a method for issuing a parental monitoring query command for determining a media object being rendered on a remote device (see, for example, flowchart of FIG. 6), comprising the steps of:

transmitting, from a monitoring device, a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device (see, for example, page 13, lines 4-8 and step 615 of FIG. 6);

receiving multicast information in response to the query, wherein the multicast information indicates a multicast address and port which is used to multicast the media object through the multicast group to the remote device from the host device (see, for example, page 13, lines 21-23 and step 660 of FIG. 6);

joining the multicast group with the received multicast information to receive the media object (see, for example, page 14, lines 3-5 and 11-12 and steps 677 and 686 of FIG. 6);

resolving the multicast address and port information to identify attributes of the media object (see, for example, page 14, lines 1-3 and 5-9 and steps 675 and 680 of FIG. 6); and

providing, from the monitoring device, a leave command to the host device to remove the remote device from the multicast group if the media object is objectionable so that receipt of the media object by the remote device is disabled in real-time (see, for example, page 14, lines 13-19 and steps 679 and 689 of FIG. 6).

Dependent claim 6 further defines claim 1 and states that the monitoring device uses a channel list that maps the multicast address and port to a channel (see, for example, page 7, lines 14-20).

Dependent claim 7 further defines claim 6 and states that a program guide is used to select media objects transmitted via a multicast media object corresponding to the channel (see, for example, page 8, line 30 to page 9, line 2).

Dependent claim 8 further defines claim 1 and states that the media object is transmitted as part of an Internet Group Management compatible protocol multicasting service (see, for example, page 4, lines 19-24) and program identification information is available for the media object as part of a Session Description compatible protocol (see, for example, page 7, lines 5-14).

Dependent claim 9 further defines claim 8 and states that the resolving step uses IGMP data obtained from a middleware server (see, for example, page 11, lines 3-16).

Independent claim 12 defines an apparatus for issuing a parental monitoring query command for determining a media object being rendered on a remote device, comprising:

a network interface (see, for example, element 79 of FIG. 1 and page 5, lines 19-23) that issues a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device (see, for example, page 13, lines 4-8 and step 615 of FIG. 6), joins the multicast group with

multicast information received in response to the query to receive the media object (see, for example, page 14, lines 3-5 and 11-12 and steps 677 and 686 of FIG. 6), and provides a leave command to the host device to remove the remote device from the multicast group if the media object is objectionable so that receipt of the media object by the remote device is disabled in real-time (see, for example, page 14, lines 13-19 and steps 679 and 689 of FIG. 6);

a transport decoder (see, for example, element 13 of FIG. 1 and page 5, lines 23-26) that processes the multicast information in response to the query, wherein the multicast information indicates a multicast address and port which is used to multicast the media object through the multicast group to the remote device from the host device (see, for example, page 13, lines 21-23 and step 660 of FIG. 6); and

a data transport decoder (see, for example, element 22 of FIG. 1) that resolves the multicast address and port information to identify attributes of the media object (see, for example, page 14, lines 1-3 and 5-9 and steps 675 and 680 of FIG. 6).

Dependent claim 16 further defines claim 13 and states that the apparatus uses a channel list that maps the multicast address and port to a channel (see, for example, page 7, lines 14-20).

Dependent claim 17 further defines claim 16 and states that a program guide is used to select media objects transmitted via a multicast media object corresponding to the channel (see, for example, page 8, line 30 to page 9, line 2).

Dependent claim 18 further defines claim 12 and states that the media object is transmitted as part of an Internet Group Management compatible protocol multicasting service (see, for example, page 4, lines 19-24) and program identification information is available for the media object as part of a Session Description compatible protocol (see, for example, page 7, lines 5-14).

VI. Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejection are presented for review in this appeal:

A. The rejection of claims 1-2, 5, 10-13 and 19 under 35 U.S.C. §103(a) based on the proposed combination of U.S. Patent Publication No. 2005/0028208 by Ellis et al. (hereinafter, “Ellis”), U.S. Patent Publication No. 2005/0157741 by Wu et al. (hereinafter, “Wu”), and U.S. Patent Publication No. 2002/0078441 by Drake et al. (hereinafter, “Drake”);

B. The rejection of claims 6-7 and 16-17 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Wu, Drake and U.S. Patent No. 6,774,926 issued to Ellis et al. (hereinafter, “Ellis ‘926”); and

C. The rejection of claims 8-9 and 18 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Wu, Drake and “Request for Comments 3266; Updates 2327, Network Working Group, June 2002 by Olsen et al. (hereinafter, “Olsen”).

VII. Argument

A. Patentability of Claims 1-2, 5, 10-13 and 19

The rejection of claims 1-2, 5, 10-13 and 19 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Wu and Drake should be reversed for at least the following reasons.

Claim 1

Independent claim 1 recites:

“A method for issuing a parental monitoring query command for determining a media object being rendered on a remote device, comprising the steps of:

transmitting, from a monitoring device, a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device;

receiving multicast information in response to said query, wherein said multicast information indicates a multicast address and port which is used to multicast said media object through the multicast group to the remote device from the host device;

joining the multicast group with said received multicast information to receive said media object;

resolving said multicast address and port information to identify attributes of said media object; and

providing, from the monitoring device, a leave command to the host device to remove said remote device from said multicast group if said media object is objectionable so that receipt of said media object by said remote device is disabled in real-time.” (emphasis added)

As indicated above, independent claim 1 recites a method for issuing a parental monitoring query command for determining a media object being rendered on a remote device, which comprises various steps including: “receiving multicast information in response to said query, wherein said multicast information indicates a multicast address and port which is used to multicast said media object through the multicast group to the remote device from the host device” and “providing, from the monitoring device, a leave command to the host device to remove said remote device from said multicast group if said media object is objectionable so that receipt of said media object by said remote device is disabled in real-time”.

In the final Office Action of December 15, 2008 (see page 3), and again in the subsequent, non-final Office Action of May 18, 2009 (see page 3), the Examiner ostensibly admits that the primary reference, Ellis, fails to teach, *inter alia*, the two underlined steps of independent claim 1. In an attempt to remedy these admitted deficiencies of Ellis, the Examiner separately relies on both Wu and Drake. Specifically, the Examiner alleges that Wu discloses the aforementioned step of “receiving multicast information in response to said query...”, and alleges that Drake discloses the aforementioned step of “providing, from the monitoring device, a leave command...”. Appellants respectfully disagree with both of these allegations for at least the following reasons.

Receiving Multicast Information

The non-final Office Action of May 19, 2009 (see page 4) alleges that the aforementioned step of “receiving multicast information in response to said query...” is disclosed by paragraphs [0036], [0037] and [0043] and FIGS. 1 and 3 of Wu.

In response, Appellants first note that the cited portion of Wu relates to the functionality of a Layer 2 switch 102 which is connected to various routers 104, 106,

108, 110 and 112 (see, again, FIG. 1 of Wu). The functionality of Layer 2 switch 102 is described, for example, in paragraph [0037] as follows:

“In accordance with the invention, Layer 2 switch 102 contains a forwarding table keyed to the group address carried in the multicast packet, where the forwarding table is for forwarding multicast group packets through ports connected to routers implementing the invention, as described further hereinbelow. The Layer 2 switch 102 reads the group address, in response to discovering a multicast address in the Layer 2 destination address field, and does a table look-up based on the group address, and finds in its forwarding table a list of ports to which the multicast group packet should be transmitted. Accordingly, Layer 2 switch 102 transmits only those multicast group packets to a multicast enabled router, where that particular router has downstream receiving host computers desiring to receive packets from that particular group of multicast packets.” (emphasis added)

As indicated above, Layer 2 switch 102 of Wu uses a forwarding table to transmit multicast group packets to multicast-enabled routers having downstream host computers that want to receive packets from that particular group of multicast packets.

Appellants respectfully submit that the foregoing disclosure of Wu is very different from what is claimed. In particular, the claimed invention provides that multicast information indicating a multicast address and port is received in response to a query. Nowhere does Wu disclose or suggest, *inter alia*, such a feature. Rather, the relied upon teachings of Wu simply indicate that Layer 2 switch 102 examines a forwarding (i.e., look-up) table to determine where certain multicast group packets should be transmitted. Nowhere does Wu disclose or suggest, *inter alia*, that its Layer 2 switch 102 or any other elements receive multicast information indicating a multicast address and port in response to a query, as claimed.

Therefore, Wu does not disclose or suggest, *inter alia*, the step of “receiving multicast information in response to said query, wherein said multicast information indicates a multicast address and port which is used to multicast said media object through the multicast group to the remote device from the host device” as recited by independent claim 1, and is unable to remedy an admitted deficiency of Ellis.

Leave Command

The non-final Office Action of May 19, 2009 (see pages 5-6) alleges that the aforementioned step of “providing, from the monitoring device, a leave command...” recited by independent claim 1 is disclosed by paragraphs [0059]-[0060] and FIG. 9 of Drake.

In response, Appellants first note that the cited portion of Drake involves a “Real-Time Viewer Authorization Detector Routine 900” (see FIG. 9) performed by a computing device 200 (see element 263 of FIG. 2). According to the aforementioned routine 900 of FIG. 9, computing device 200 determines if set-top boxes (STBs) (e.g., elements 120 of FIG. 1 and/or element 270 of FIG. 2) are inaccurate or non-responding, and if so, notifies a content provider to halt the content provided to those particular STBs (see paragraphs [0059]-[0060], and specifically steps 935-940 and 965 of FIG. 9). In this manner, the cited portions of Drake teach that content provided to a given STB may be halted if the STB itself is deemed deficient (i.e., inaccurate or non-responding).

In contrast to the teachings of Drake, the claimed invention provides that “a leave command [is provided] to the host device to remove said remote device from said multicast group if said media object is objectionable” (emphasis added). In other words, when determining whether to halt the content provided to a given STB, Drake focuses on characteristics of the STB (i.e., Is the STB inaccurate or non-responding?), whereas the claimed invention focuses on characteristics of the underlying content (i.e., media object) being multicast (i.e., Is the media object objectionable?). In this manner, Drake uses a completely different technique than the claimed invention for determining whether to halt the delivery of content to particular STBs.

Therefore, Drake does not disclose or suggest, *inter alia*, the step of “providing, from the monitoring device, a leave command to the host device to remove said remote device from said multicast group if said media object is objectionable so that receipt of said media object by said remote device is disabled in real-time” as recited by independent claim 1, and is unable to remedy another admitted deficiency of Ellis.

Moreover, modifying Ellis using the relied upon teachings of Drake, as proposed by the Examiner, would change the **principle operation** of Ellis. In particular, Ellis teaches that “[t]he remote access program guide, for example, may provide users with an opportunity to block potentially objectionable programs or channels using a parental control code (e.g., a personal identification number (PIN) code).” See Ellis, paragraph [0120]. Placing a parental code on a media object, as taught by Ellis, still allows that media object to be received (i.e., a program can still be viewed if the parental code is entered).

In contrast, a leave command, as claimed, prevents the remainder of a program from being received. According to MPEP § 2143.01(VI), “[i]f the proposed modification or combination of the prior art would change the **principle operation** of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.” (emphasis added) See MPEP § 2143.01(VI) (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Further, MPEP § 2143.01(VI) explains that the court in *Ratti* held the “suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate.” See MPEP § 2143.01(VI) (citing *In re Ratti*, 270 F.2d 813, 123 USPQ 352 (CCPA 1959)). Here, by modifying Ellis using the relied upon teachings of Drake, as proposed by the Examiner, the basic principle of a parental code in Ellis would have to be changed and Ellis would have to be substantially reconstructed and redesigned to provide a leave command (as claimed) rather than a parental code.

Therefore, for at least the foregoing reasons, Appellants submit that the teachings of Ellis, Wu and Drake are not sufficient to render independent claim 1 prima facie obvious under 35 U.S.C. §103(a).

Claims 2, 5 and 10-11

Claims 2, 5, and 10-11 depend from independent claim 1 and are allowable for at least the same reasons discussed above with respect to independent claim 1.

Claim 12

Independent claim 12 includes subject matter similar to independent claim 1, and is allowable for at least the same reasons discussed above with respect to independent claim 1.

Claims 13 and 19

Claims 13 and 19 depend from independent claim 12 and are allowable for at least the same reasons discussed above with respect to independent claim 12.

Accordingly, for at least the foregoing reasons, Appellants respectfully request that the Board reverse the rejection of claims 1-2, 5, 10-13 and 19.

B. Patentability of Claims 6-7 and 16-17

The rejection of claims 6-7 and 16-17 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Wu, Drake and Ellis '926 should be reversed for at least the at least the following reasons.

Claims 6 and 7

Claims 6 and 7 depend from independent claim 1 and are allowable for at least the same reasons discussed above with respect to independent claim 1.

Claims 16 and 17

Claims 16 and 17 depend from independent claim 12 and are allowable for at least the same reasons discussed above with respect to independent claim 12.

Accordingly, Appellants respectfully request that the Board reverse the rejection of claims 6-7 and 16-17.

C. Patentability of Claims 8-9 and 18

The rejection of claims 8-9 and 18 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Wu, Drake and Olsen should be reversed for at least the at least the following reasons.

Claims 8 and 9

Claims 8 and 9 depend from independent claim 1 and are allowable for at least the same reasons discussed above with respect to independent claim 1.

Claim 18

Claim 18 depends from independent claim 12 and is allowable for at least the same reasons discussed above with respect to independent claim 12.

Accordingly, Appellants respectfully request that the Board reverse the rejection of claims 8-9 and 18.

Respectfully submitted,

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VIII. Claims Appendix

1. A method for issuing a parental monitoring query command for determining a media object being rendered on a remote device, comprising the steps of:

transmitting, from a monitoring device, a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device;

receiving multicast information in response to said query, wherein said multicast information indicates a multicast address and port which is used to multicast said media object through the multicast group to the remote device from the host device;

joining the multicast group with said received multicast information to receive said media object;

resolving said multicast address and port information to identify attributes of said media object; and

providing, from the monitoring device, a leave command to the host device to remove said remote device from said multicast group if said media object is objectionable so that receipt of said media object by said remote device is disabled in real-time.

2. The method of Claim 1, wherein said media object is rendered on said monitoring device.

Claim 3 (Cancelled)

Claim 4 (Cancelled)

5. The method of Claim 1, wherein said monitoring device is an Internet Protocol enabled set top box.

6. The method of Claim 1, wherein said monitoring device uses a channel list that maps said multicast address and port to a channel.

7. The method of Claim 6, wherein a program guide is used to select media

objects transmitted via a multicast media object corresponding to said channel.

8. The method of Claim 1, wherein said media object is transmitted as part of an Internet Group Management compatible protocol multicasting service and program identification information is available for said media object as part of a Session Description compatible protocol.

9. The method of Claim 8, wherein said resolving step uses IGMP data obtained from a middleware server.

10. The method of Claim 1, where said query additionally comprises:
a request for a browser history log file, wherein said log file comprises the IP addresses of media objects accessed by said remote device.

11. The method of Claim 10, wherein said remote device is a personal computer.

12. An apparatus for issuing a parental monitoring query command for determining a media object being rendered on a remote device, comprising:

a network interface that issues a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device, joins the multicast group with multicast information received in response to said query to receive said media object, and provides a leave command to the host device to remove the remote device from the multicast group if said media object is objectionable so that receipt of said media object by said remote device is disabled in real-time;

a transport decoder that processes said multicast information in response to said query, wherein said multicast information indicates a multicast address and port which is used to multicast said media object through said multicast group to said remote device from said host device; and

a data transport decoder that resolves said multicast address and port information to identify attributes of said media object.

13. The apparatus of Claim 12, wherein said media object is rendered on said apparatus.

Claim 14 (Cancelled)

Claim 15 (Cancelled)

16. The apparatus of Claim 13, wherein said apparatus uses a channel list that maps said multicast address and port to a channel.

17. The apparatus of Claim 16, wherein a program guide is used to select media objects transmitted via a multicast media object corresponding to said channel.

18. The apparatus of Claim 12, wherein said media object is transmitted as part of an Internet Group Management compatible protocol multicasting service and program identification information is available for said media object as part of a Session Description compatible protocol.

19. The apparatus of Claim 12, where said query additionally comprises:
a request for a browser history log file, wherein said log file comprises the IP addresses of media objects accessed by said remote device.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.